THE BOMBAY OPIUM SMOKING ACT, 1936.

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SCHEDULE.

BOMBAY ACT No. XX OF 1936.[1]

[THE BOMBAY OPIUM SMOKING ACT, 1936.]

[*7th December 1936.*]

Adapted and modified by the Adaptation of Indian Laws Order in Council.

Amended by Bom. 17 of 1945.†

An Act to provide for the control of the practice of opium smoking and to prevent the assembling of persons for the purpose of such smoking in the Presidency of Bombay.

WHEREAS it is expedient to control the practice of opium smoking and to prevent the assembling of persons for such smoking in the Presidency of Bombay in the manner hereinafter appearing; And whereas the previous sanction of the Governor General required under sub-section (*3*) of section 80A of the Government of India Act and the previous sanction of the Governor required under section 80C of the said Act have been obtained to the passing of this Act; It is hereby enacted as follows:—

5 & 6 Geo. V, c. 61.

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Opium Smoking Act, 1936.

(*2*) It extends to the whole of the Presidency of Bombay.

(*3*) This section shall come into force at once. The [2][Provincial Government] may, by notification in the [3][*Official Gazette*], direct that the remaining provisions of this Act shall come into force on such date as may be appointed in the notification.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*1*) "Collector" includes an officer appointed under section 3 to exercise the powers and perform the duties of a Collector under this Act;

(*2*) "Commissioner" means the Commissioner of Excise;

(*3*) "Duly empowered" means duly empowered by the [2][Provincial Government] by a general or special order;

(*4*) "Instrument of smoking" means any article used for the purpose of smoking opium;

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1936, Part V, pp. 179—181; and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1936, Vol. XLV.

[2] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

[3] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

† This Act has been repealed and re-enacted and the amendments made by section 9 and Schedule E of the said Act were continued in force by Bom. 52 of 1947, s. 2.

(5) "Opium" has the same meaning as is assigned to it in the Opium Act, 1878, and includes *chandul*, *madat*, opium dross or scrapings from the opium pipe and every other preparation or admixture of opium which may be used for smoking; I of 1878.

(6) "Place" includes a house, building, shop, hut, tent, boat or vessel and any part thereof; and

(7) "Prepared opium" means any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked.

CHAPTER II.

PROHIBITION AND CONTROL.

Appointment of special Collectors.

3. The [1][Provincial Government] may, by notification in the [2][*Official Gazette*], appoint any person other than the Collector of Land Revenue, to exercise in any district or area, all or any of the powers conferred, and perform all or any of the duties imposed, by this Act on a Collector, subject to such control, if any, in addition to that of the Commissioner and of the [1][Provincial Government], as the [1][Provincial Government] may from time to time direct.

Opium smoking assembly.

4. An assembly of two or more persons is designated an opium smoking assembly, when the common object of the persons composing that assembly is to smoke opium or to prepare opium for smoking purposes.

Explanation 1.—An assembly which was not an opium smoking assembly when it was assembled may subsequently become such assembly.

Explanation 2.—A man and his wife shall not be deemed to be an opium smoking assembly within the meaning of this section, even if their common object be to smoke opium or to prepare opium for smoking purposes.

Member of opium smoking assembly.

5. Whoever, being aware of facts which render an assembly an opium smoking assembly, intentionally joins that assembly, or continues therein, is said to be a member of that assembly.

Presumption raised by presence of opium and any instrument of smoking.

6. The presence of any opium or prepared opium, and of any instrument of smoking or of any apparatus used in the preparation of opium in any place where two or more persons are assembled shall be held sufficient to raise a presumption that each member of such assembly is present at such place for the purpose of smoking opium or of preparing opium for smoking purposes.

CHAPTER III.

OFFENCES AND PENALTIES.

Penalty for being member of opium smoking assembly.

7. Whoever is a member of an opium smoking assembly shall, on conviction, be punishable with imprisonment of either description for a term which may extend to one month, or with fine which may extend to Rs. 100, or with both.

[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid*.

8. Whoever opens, keeps or uses any place, or permits any place to be opened, kept or used for the purpose of an opium smoking assembly, or has the care or management of, or in any way assists in conducting the business of, any place used or kept for the purposes aforesaid, shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to Rs. 1,000, or with both. Penalty for opening, keeping or having charge of place of assembly.

9. Whoever, being the owner of any place and knowing or having reason to believe that such place, whether in his actual occupation or otherwise, is being or is about to be used for the purpose of an opium smoking assembly, fails, either himself or through his agent or servant, to give the earliest possible notice of such knowledge or belief to the Collector or the officer in charge of the nearest police station, or to an officer empowered under this Act to investigate offences punishable under this Act, shall, on conviction, be punishable with fine which may extend to Rs. 500. Penalty when owner fails to give notice of use of place for such assembly.

10. Whoever, having been convicted of an offence under section 7, section 8 or section 9, is again convicted of an offence under any of the said sections, shall, on conviction, be liable for any such subsequent offence to an enhanced punishment not exceeding double the punishment which might be imposed on a first conviction for such offence. Penalty for subsequent offences.

11. (*1*) Whenever any person is convicted of an offence punishable under this Chapter, and the court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under this Chapter, the court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix. Security for abstaining from offences.

(*2*) The bond shall be in the form contained in the Schedule annexed to this Act and the provisions of the Code of Criminal Procedure, 1898, shall, in so far as they are applicable, apply to all matters connected with such bond, as if it were a bond to keep the peace ordered to be executed under section 106 of that Code. V of 1898.

(*3*) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(*4*) An order under this section may also be made by an appellate court or by the High Court when exercising its power of revision.

CHAPTER IV.

PROCEDURE.

12. The Commissioner, Collector or any officer of the Excise Department duly empowered or a Magistrate authorized under section 24 to take cognizance of offences under this Act may issue a warrant for the arrest of any person whom he has reason to believe, to have committed an offence under this Act, or for the search, whether by day or by night, of any place in which he has reason to believe that an offence under this Act has been, or is being or is likely to be committed, or in which opium, an instrument of smoking or an apparatus used in the preparation of opium is kept or concealed. Power to issue warrants.

Power of entry, search and arrest by certain officer.

13. The Commissioner, Collector or any officer duly empowered, who has reason to believe that an offence under Chapter III has been, or is being or is likely to be, committed in any place, may—

(*a*) enter such place by day or by night with any persons whose assistance he may consider necessary,

(*b*) search any such place in which he has reason to believe that any opium, or instrument of smoking, or any apparatus used in the preparation of opium is kept or concealed,

(*c*) detain and search, and, if he thinks proper, arrest any person found in such place or whom he has reason to believe to have committed an offence punishable under Chapter III, and

(*d*) seize all opium and instruments of smoking and any apparatus used in the preparation of opium which may be found in such place or on or about such person.

Arrest of persons obstructing officers in execution of duties under the Act.

14. The Commissioner, Collector or any officer duly empowered may arrest, without an order from a magistrate and without warrant, any person who obstructs him in the execution of his duty under this Act, or who has escaped or attempts to escape from custody in which he has been or is lawfully detained under this Act.

Mode of making searches and arrests.

15. (*1*) The provisions of the Code of Criminal Procedure, 1898, shall apply, so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests and searches made under this Act. V of 1898.

(*2*) All such warrants shall be executed by a police officer, or an officer of the Excise Department duly empowered in this behalf or if the officer issuing the warrant deems fit by any other person :

Provided that no search shall, in the absence of local search witnesses, be deemed to be illegal or defective or irregular, if such absence is explained to the satisfaction of the court.

Disposal of persons arrested and of articles seized.

16. (*1*) Every person arrested and article seized under a warrant issued under section 12 shall be forwarded without delay to the authority by whom the warrant was issued, and every person arrested and article seized under section 13 or section 14 shall be forwarded without delay to—

(*a*) the nearest officer of the Excise Department empowered under section 18, or

(*b*) (*i*) in [1][the Greater Bombay] to the nearest officer in charge of a section within the meaning of the City of Bombay Police Act, 1902, and Bom. IV of 1902.

(*ii*) elsewhere, to the officer in charge of the nearest police station within the meaning of the Code of Criminal Procedure, 1898. V of 1898.

(*2*) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal, according to law, of such person or article.

Refusal to give name and residence.

17. (*1*) When any person who, in the presence of any officer of such rank as the [2][Provincial Government] may, by general or special order, specify in this behalf, has committed or has been accused of committing an offence under this Act, refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained.

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[1] These words were substituted by Bom. 17 of 1945, read with Bom. 52 of 1947, s. 2, proviso.

[2] The words "Provincial Government" were substituted for the words "local Government" by the Adaptation of Indian Laws Order in Council.

(2) When the correct name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a magistrate, if so required :

Provided that if such person is not resident in British India the bond shall be secured by a surety or sureties residing in British India.

(3) Should the correct name and residence of such person not be ascertained within 24 hours from the time of arrest, and should he fail to execute the bond, or, if he is so required to furnish sufficient sureties, he shall be forthwith forwarded to the nearest magistrate having jurisdiction.

Certain officers empowered to investigate offences under the Act.

18. (1) The Commissioner, Collector and any officer of the Excise Department duly empowered in this behalf shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

V of 1898. (2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence :

Provided that—

(a) if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused to a magistrate or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear if and when so required, before a magistrate and shall make a full report of the case to his superior officer, if any, and be guided by the order which he shall receive on such report ;

(b) the powers of such officers other than the Commissioner or Collector shall be subject to such further modifications or restrictions as the [1][Provincial Government] may determine.

Offences under the Act to be bailable.

19. (1) All offences punishable under this Act shall be bailable.

(2) Any officer authorized under section 18 to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of V of 1898. the Code of Criminal Procedure, 1898, to any person arrested without warrant for an offence punishable under this Act.

Articles seized during investigation.

20. When anything has been seized by any officer exercising powers under section 18, such officer, after such inquiry as may be necessary—

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward the thing to the magistrate to whom such person is forwarded or before whom bail has been taken for his appearance ;

(b) if it appears that such thing is liable to confiscation, but is not required as evidence as aforesaid, shall send the thing with a report of the particulars of the seizure to his superior officer, if any ;

(c) if no offence appears to have been committed, shall return the thing to the person from whose possession it was taken and shall report to his superior officer, if any, accordingly.

[1] The words "Provincial Government" were substituted for the words "local Government" by the Adaptation of Indian Laws Order in Council.

Officers and persons required to assist in detection of offences under the Act.

21. All village officers, all village servants useful to Government and all officers of the Departments of Police, Forest, Customs, Salt Revenue and all persons in the employment of the Bombay Port Trust shall be bound—

(*a*) to give immediate information to any of the officers mentioned in section 12 or section 13 or section 18 of the commission of any offence and of the intention or preparation to commit any offence under this Act which may come to their knowledge ;

(*b*) to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to believe is about to be committed ; and

(*c*) assist such officer in carrying out the provisions of this Act.

Penalty for neglecting to assist officers acting under the Act.

22. Any officer or person mentioned in the preceding section who without lawful excuse neglects or refuses to give information or to take preventive measures or to give assistance to any of the officers mentioned in section 12 or section 13 or section 18 in the manner required by the preceding section shall, on conviction, be punishable with fine which may extend to Rs. 500.

Penalty for vexatious search or arrest.

23. Any officer empowered under this Act who—

(*a*) without reasonable ground of suspicion, enters or searches, or causes to be searched any place, or

(*b*) vexatiously and unnecessarily seizes the property of any person on the pretext of seizing or searching for anything liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily detains, searches or arrests any person shall, on conviction, be punishable with fine which may extend to Rs. 500.

Jurisdiction.

24. No Magistrate other than a Presidency Magistrate, or a Magistrate of the First Class, or a Magistrate of the Second Class duly empowered in this behalf, shall take cognizance of any offence under this Act.

Cognizance of offences.

25. No magistrate shall take cognizance of any offence punishable under this Act,—

(*a*) except on the complaint or report of the Commissioner or a Collector or any other officer duly empowered under section 12 or a police officer, or

(*b*) except upon his own knowledge or suspicion.

Things liable to confiscation.

26. Whenever any offence under this Act has been committed, all opium, prepared opium, instruments of smoking and apparatus used in the preparation of opium found in the place or with the persons forming an opium smoking assembly, together with the receptacles, packages, coverings, animals, carts, vessels or other conveyances used in carrying them shall be liable to confiscation.

Procedure in making confiscation.

27. (*1*) In the trial of offences under this Act, whether the accused is convicted or acquitted, the court shall decide whether any article seized under this Act is liable to confiscation under the preceding section, and if it decides that the article is so liable, it may order its confiscation accordingly.

(*2*) When any article seized under this Act appears liable to confiscation under the preceding section but the person who committed the offence in connection therewith is not known or cannot be found, the Collector or other officer duly empowered in this behalf may inquire into and decide such liability and may order confiscation accordingly :

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in support of his claim :

Provided further that if any such article, other than opium, is liable to speedy and natural decay, or if the Collector or other officer is of opinion that its sale would be for the benefit of its owner, he may at any time direct it to be sold, and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(*3*) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

CHAPTER V.

MISCELLANEOUS.

Delegation of powers.

28. The powers conferred on the Commissioner or Collector under this Act may, subject to the general or special orders of [1][the Provincial Government], be delegated by the Commissioner or Collector, as the case may be, in whole or in part, to any subordinate officer.

Power to make rules.

29. (*1*) The [2][Provincial Government] may make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provisions, such rules may be made for all or any of the following purposes :—

(*a*) regulating the disposal of things confiscated,

(*b*) prescribing and regulating the payment of rewards out of fines imposed under this Act,

(*c*) providing for any other matter for which there is no provision or there is insufficient provision in this Act and for which provision is, in the opinion of the [2][Provincial Government], necessary for giving effect to the provisions of this Act.

(*3*) Rules made under this section shall be subject to the condition of previous publication in the [3][*Official Gazette*].

(*4*) Rules made under this section shall be laid [4][before each Chamber of the Provincial Legislature] at the session [5][thereof] next following and shall be liable to be modified or rescinded by a resolution [6][in which both the Chambers concur], and such rule shall, after notification in the [3][*Official Gazette*], be deemed to have been modified or rescinded accordingly :

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[1] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "Provincial Government" were substituted for the words "local Government", *ibid.*

[3] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

[4] The words "before each Chamber of the Provincial Legislature" were substituted for the words "upon the table of the Bombay Legislative Council", *ibid.*

[5] The word "thereof" was substituted for the words "of the said Council", *ibid.*

[6] The words "in which both the Chambers concur" were substituted for the words "of the said Council", *ibid.*

Provided that when, in the opinion of the [1][Provincial Government], such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the [1][Provincial Government] may, by notification in the [2][*Official Gazette*], declare that such modification or rescission shall have no effect, and thereupon the rule shall remain in force as if it had not been modified or rescinded.

Protection of persons acting in good faith, and limitation of suits or prosecutions.

30. (*1*) No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(*2*) No suit shall be instituted against [3][the Crown] and no prosecution or suit shall lie against any officer in respect of anything done or alleged to have been done in pursuance of this Act, unless such suit or prosecution has been instituted within three months of the date of the act complained of.

Certain officers to be public servants.

31. All officers empowered under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

SCHEDULE.

Bond to abstain from the commission of offences under the Bombay Opium Smoking Act, 1936.

(Section 11.)

Whereas I (name) inhabitant of (place) , have been called upon to enter into a bond to abstain from the commission of offences under section 7, section 8 and section 9, of the Bombay Opium Smoking Act, 1936, for the term of
I hereby bind myself not to commit any such offence during the said term and, in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees.

Dated this day of 19

(Signature)

(Where a bond with sureties is to be executed, add—)

We do hereby declare ourselves sureties for the above-named that he will abstain from the commission of offences under section 7, section 8 and section 9 of the Bombay Opium Smoking Act, 1936, during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees

Dated this day of 19

(Signature)

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[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.
[2] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*
[3] The words "the Crown" were substituted for the words "Government", *ibid.*